

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA**

**10-CR-6182-CJS**

**v.**

**NOTICE OF MOTION**

**TERRY DICKINSON,**

**Defendant.**

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**MOTION BY:**

Mark D. Hosken, Supervisory Assistant  
Federal Public Defender, Attorney for Terry  
Dickinson.

**DATE, TIME & PLACE:**

April 28, 2014, at 9:00 A.M., before the  
Honorable Charles J. Siragusa, 1320 U.S.  
Courthouse, Rochester, New York.

**SUPPORTING PAPERS:**

Affirmation of Mark D. Hosken, affirmed on  
April 21, 2014, the memoranda in support,  
and all prior proceedings had herein.

**RELIEF REQUESTED:**

An Order granting defendant's *in limine*  
request.

Dated: April 21, 2014  
Rochester, New York

/s/Mark D. Hosken

Mark D. Hosken  
Supervisory Assistant Federal Public Defender  
Federal Public Defender's Office  
28 East Main Street, Suite 400  
Rochester, New York 14614  
585-263-6201  
Mark\_Hosken@fd.org  
Attorney for Terry Dickinson

**TO:** Tiffany Lee, AUSA

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA**

**10-CR-6182-CJS-MWP**

**v.**

**AFFIRMATION**

**TERRY DICKINSON,**

**Defendant.**

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Mark D. Hosken, Supervisory Assistant Federal Public Defender for the Western District of New York, affirms as follows:

1. I am an attorney licensed to practice law in the State of New York and in the United States District Court for the Western District of New York, and I represent the defendant, Terry Dickinson.

2. The defendant is charged in an eleven count indictment alleging the distribution, receipt and possession of child pornography. Trial is set to commence with jury selection on April 28, 2014.

3. The government provided notice that it intends to elicit testimony and offer evidence at the defendant's trial pursuant to FED.R.EVID. 404(b) and 414. The government seeks to offer:

- (a) testimony from an adult relative of the defendant that she discovered a videotape depicting the defendant sexually abusing her (the tape was allegedly destroyed by this witness) which triggered memories of sexual

abuse by the defendant while the witness was in first or second grade;

- (b) a notebook including its contents that detail sexual interactions with many children including “Chantel” (age 6) and “Andrea” (age 10) who will be called to testify that they were the individuals identified in the notebook. Moreover, it is believed these witnesses (now adults) will testify they were sexually abused by the defendant; and
- (c) testimony from a child (identified as “Ivy’s grandson”) that the defendant touched the child inappropriately.

4. The defendant maintains that such evidence is inadmissible as it violates the presumption of innocence resulting in impermissible burden shifting. Further it is not proper 404(b) or 414 evidence. The admission of such evidence has limited probative value and any probative value is grossly outweighed by the potential for unfair prejudice pursuant to FED.R.EVID. 403.

5. The defendant relies on the authorities contained in his memorandum of law to support this application.

**WHEREFORE**, it is requested this Court enter an order precluding the government from offering the noticed evidence at trial.

Dated: April 21, 2014  
Rochester, New York

Respectfully submitted,

/s/Mark D. Hosken

Mark D. Hosken  
Supervisory Assistant Federal Public Defender  
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28 E. Main Street, Suite 400  
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585-263-6201  
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Attorney for Terry Dickinson

TO: Tiffany Lee, AUSA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

10-CR-6182-CJS

TERRY DICKINSON,

Defendant.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 21, 2014, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. Tiffany Lee, AUSA – tiffany.lee@usdoj.gov

And, I hereby certify that I have mailed by the United States Postal Service the document to the following non-CM/ECF participant(s).

- 1.

/s/Judith M. Middleton  
Judith M. Middleton  
Federal Public Defender's Office  
28 E. Main Street, Suite 400  
Rochester, New York 14614